

Misc Case 65 of 2023.

Order no.12 dt.04.07.23.

Petitioner files hazira. OP also files hazira.

OP files written objection against the Misc Case duly supported by affidavit.

Copy is served.

Petitioner files declaration of assets and liabilities supported by verification.

No affidavit is given in support such assets and liabilities.

Copy is not served or enclosed. Let it be kept with the record.

OP files a petition praying for time for filing declaration of assets and liabilities.

Heard both sides.

Fix 29.08.23 for filing assets and liabilities and hearing the Misc Case.

Additional District Judge,
2nd Court, Howrah.

Order No.13 dt.04.07.23.

Both sides file their respective hazira.

Respondent files some documents as per firisti. Let it be kept with the record.

Today is fixed for hearing of the petition u/o 6 rule 17 of CPC filed by the respondent praying for amendment of WS.

Said petition u/o 6 rule 17 of CPC along with its objection is taken up for hearing.

Heard both sides.

Perused the petition and its objection.

Considered.

It appears from the amendment petition that the respondent wants to incorporate some facts as subsequent events in the WS as sub para no.6a, 6b, 9a, 11a, 16a as per the schedule of amendment enclosed with the petition and also wanted to delete para no.27 of WS. At the time of hearing, Ld Advocate for the petitioner submitted that all those facts were not within the knowledge of the respondent and could not be given in the WS filed by the respondent by previous lawyer. It is submitted that those facts are important to be incorporated in the WS for proper adjudication of the suit. If the said facts are not incorporated in the WS, the respondent will be aggrieved.

On the other hand, Ld Advocate for the petitioner raised strong objection against such prayer and submitted that only by virtue of change of lawyer such amendment should not be allowed. It is also submitted that the facts which are mentioned in the proposed amendment are already on the record by way of WS and at present respondent by way of proposed amendment wanted to elaborate those facts and as such it cannot be said that those facts were not within the knowledge of the respondent or the respondent could not submit those facts earlier despite her due diligence. Accordingly, it is argued that the amendment petition is fit to be dismissed.

Ld Advocate for the respondent relied upon decision reported in AIR 2002 Supreme Court 559 in support of his submission.

On going through the proposed amendment as per schedule amendment, I find that in para 6a respondent wants to incorporate the facts regarding withdrawal of matrimonial suit no.109 of 2019 on 04.12.2021. In existing para 6 of WS, there is mention of said suit but there is nothing regarding the withdrawal of the said suit on 04.12.21. Therefore, this fact is certainly a subsequent fact.

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Mat 575 of 2022

In proposed para 6b, respondent wanted to incorporate about the dues in respect of maintenance case u/s 125 CrPC and PWDV Act and the fact of filing of Misc Case u/s 36 of Special Marriage Act. There is mention of those cases in the para 6 of WS and also about the dues in respect of those cases but there is nothing regarding filing of Misc Case u/s 36 of Special Marriage Act. Therefore, this fact can also be considered as a subsequent event.

In sub para of proposed para 6b, respondent wanted to incorporate and elaborate the fact relating to the order passed by Judicial Magistrate in case under PWDV Act and u/s 125 of CrPC, which are matter of record and such facts can be incorporated.

In para 9a of the proposed amendment, the respondent wanted to incorporate that all her nuptial gifts are lying with the petitioner. In this respect, Ld Advocate for the respondent submitted that in para 9 of the WS details of the list of articles is mentioned and even a case u/s 498A/ 406 of IPC has been filed as per the WS for recovery of those articles and accordingly respondent was well aware about such facts. However, going through the para 9 of WS and proposed para 9a, I find that only the fact that those nuptial gifts are lying with the petitioner is the matter of concern for the respondent which she wanted incorporate in the WS. Therefore, proposed amendment of para 9 appears to be nothing but further elaboration of the facts already in existence and within the knowledge of the parties.

In proposed para 11a, respondent has wanted to incorporate facts relating to meagre income of her mother and expenses towards her child and also income of the petitioner husband. In para 16a respondent wanted to incorporate the facts relating to filing of case u/s 97 of CrPC against mother of the respondent which is duly supported by document filed by the respondent.

Therefore, on going through the submissions of both sides and WS and proposed amendment, it appears that proposed amendments are formal in nature and no prejudice will be caused to the petitioner husband if proposed amendment is allowed. The trial of this case has not yet begun and as such taking lenient view on the matter and also in the light of the decision of Hon'ble Supreme Court passed in AIR 2002 SC 559 and considering that the respondent should get every chance to defend her case properly, I am inclined to allow the proposed amendment.

In view of the above, petition u/o 6 rule 17 of CPC is considered and allowed on contest.

Amend the plaint and note in the register.

Respondent is directed to file amended copy of WS positively by the next date.

Fix 29.08.23 for filing amended copy of WS.

Additional District Judge,
2nd Court, Howrah.

